

REMARKS

Claims 53-59 are pending.

Claims 7, 8, 10-13, 20,21, 23, 24, 25, 27, 44 are conditionally cancelled pursuant to traverse and claims 34, 35, 37, 39, and 45-52 are conditionally withdrawn.

As noted in the file, this application has been filed to provoke an interference with issued U.S. Patent 5,877,159 issued to Powell et al. Claims issued in the Powell patent, have been divided into separate inventions by the May 15, 2001 action.

Claim 45 = Powell Claim 1

Claim 46 = Powell Claim 5

Claim 47 = Powell Claim 6

Claim 49 = Powell Claim 13

Claim 50 = Powell Claim 14

Claim 53 = Powell Claim 15

Likewise, Applicants believe the following claims correspond to counts and should be maintained in a single application:

Claim 48 ≈ Powell Claim 1

Claim 51 ≈ Powell Claim 13

Claim 52 ≈ Powell Claim 14

Claim 54 ≈ Powell Claim 22

Claim 55 ≈ Powell Claim 21

Claim 57 ≈ Powell Claim 22

Claim 58 ≈ Powell Claim 20

Claim 59 ≈ Powell Claim 23.

In view of the existence of the Group III and V claims in a single issued patent, Applicants submit that the restriction is not proper as to those claims. Furthermore, Applicants submit that the claims should not be restricted in view of the following concerning restriction under 35 U.S.C. §121.

Applicants respectfully traverse the restriction requirement since the rules of practice require that the inventions restricted must be found to be both independent and distinct in order for a restriction requirement to be proper. The outstanding Official Action only indicates that the inventions recited in the claims are distinct. Applicants submit that the complete examination of the application would be most expeditiously handled by treating all pending claims as a single entity. As Section 803 of the M.P.E.P. requires,

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

It is respectfully urged that the restriction requirement is improper because the Examiner has not shown that a search and examination of the entire application would, indeed, cause a serious burden, as required by Section 803 of the M.P.E.P. In fact, a serious burden would arise only if the application were restricted to one of the two identified inventions. Filing an additional application to the non-elected invention, would unnecessarily burden (1) the Patent and Trademark Office, since it must assume the additional and unnecessary labor involved in individually examining multiple applications; (2) the public, since it will have to examine multiple patents (assuming the subject matter is found

patentable) to fully ascertain the claimed subject matter; and (3) the Applicant, since the Applicant must bear the substantial financial burden and delays associated with prosecuting and maintaining multiple applications.

In view of the foregoing, Applicants request reconsideration of the restriction requirement and submits that the application is now in condition for substantive examination of all claims on the merits. Therefore, Applicants request favorable consideration of the application, as amended.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

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July 13, 2001